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Precautionary Reason as a Link to Moral Action

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[2000. "Precautionary Reasoning as a Link to Moral Action." In Michael Boylan ed., *Medical Ethics*, 39–53. Upper Saddle River New Jersey: Prentice-Hall, 2000.]

Introduction¹

In *Reason and Morality* (1978), Alan Gewirth demonstrates² that agents and prospective agents³ deny that they are agents if they do not accept and act in accordance with the Principle of Generic Consistency (according to which all agents are required to act in accordance with the "generic rights"⁴ of all agents). Since Gewirth's concept of an agent is equivalent to Kant's idea of "a rational being with a will," Gewirth establishes that the Principle of Generic Consistency has the status that Kant claimed was necessary for an imperative to be categorically binding: namely, that it be "connected (entirely *a priori*) with the concept of the will of a rational being as such" (Kant 1948, 62).⁵ The Principle of Generic Consistency is, therefore, established as the supreme principle, not only of morality, but of all practical reasoning.

To establish what may or may not be done, what ought or ought not to be done, is, quite simply, a matter of establishing what the Principle of Generic Consistency permits or requires in relation to *agents*.

This, however, is by no means an unproblematic task. The way in which Gewirth defines agency is to be viewed, not as a generalisation about the empirical characteristics of human beings or any other creatures in the world, but as a function of the characteristics that beings must be supposed to have if they are to be regarded, rationally, as subjects and objects of practical precepting. Agents are defined as they are in Gewirthian (and Kantian) theory, because it is only for beings with the capacity to direct their actions voluntarily towards purposes that they have chosen that questions arise about what practical precepts may or should be followed, and it is only to such beings that practical precepts can rationally be directed. However, while this feature renders the premise of Gewirth's argument for the Principle of Generic Consistency immune from objections derived from empirical psychology, it opens the way to an objection of an altogether different kind.

As defined, being an agent involves having a kind of mental attitude (so that the capacities that make up being an agent are, in essential part, mental capacities). Thus, since I

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¹ This essay is derived in part from Beyleveld and Pattinson 1998.

² See Beyleveld 1991.

³ An agent acts, i.e., voluntarily pursues its freely chosen purposes. A prospective agent has the capacity and disposition to act. We use "agent" to cover both agents and prospective agents.

⁴ Generic rights are to the generic features of agency (those capacities an agent needs to be able to act at all or with any general chances of success, *whatever its purposes might be*). Interference with, or deprivation of, a generic feature of agency will interfere (or tend to interfere) with an agent's capacity to act or to act successfully, *regardless of what the action envisaged is*.

⁵ See Beyleveld 1999a for analysis of the relationship between Kant's derivation of the Categorical Imperative and Gewirth's argument to the Principle of Generic Consistency.

(any agent) have direct access to my mental state, I know that I am an agent directly. I do not, however, know that any other being is an agent in this way. The best I (any agent) can do, when trying to determine whether or not some other being “X” is an agent, is to construct a model of the characteristics and behavior to be expected of an agent, and test X’s characteristics and behavior against it. However, even if X exhibits all the characteristics and behavior expected of an agent (as most biologically human beings do) and is *ostensibly* an agent, this does not *prove* that X is an agent. It is *possible* that X is a programmed automaton without a mind, and no amount of empirical observation of X’s characteristics and behavior will be able to prove otherwise. The relevance of empirical evidence cited for X’s mental status depends on metaphysical assumptions. In short, the problem of knowing whether or not another being is an agent is a special case of the philosophical problem of other minds.

Thus, a sceptic might concede that Gewirth has, indeed, shown that the Principle of Generic Consistency is categorically binding upon *agents*, but then contend that this has no *practical* significance, because it cannot be demonstrated with the same degree of stringency (to the sceptic—any agent) that there are any other agents. In other words, the Principle of Generic Consistency has categorical application only in the abstract. In relation to objects in the empirical world, it provides no categorically binding criterion for moral action.

In this essay we will first of all respond to the sceptic. We will argue that the categorically binding nature of the Principle of Generic Consistency requires precautionary reasoning to be employed so as to make it a categorically binding requirement to regard all beings that behave as though they are agents *as* agents.

In Part II we will argue that this same reasoning requires agents to recognise duties to various “marginal” groups (such as young children, the mentally deficient, fetuses, and non-human animals), in proportion to the degree to which there is evidence that they might possibly be agents. Gewirth himself has argued that such marginal groups have the generic rights in proportion to the extent to which they approach being agents (see Gewirth 1978, 121-124; 140-145). However, instead of deriving such protection from the epistemic limitations of the Principle of Generic Consistency’s empirical application, Gewirth seeks to extend the population to which the principle grants protection in the abstract. In Part III, we argue that Gewirth’s attempt to do this fails.

Part IV will focus on Gewirth’s analysis of the level of protection to be conferred on fetuses, thereby demonstrating that despite adopting a different rationale, our analysis grants a similar level of protection to marginal groups as Gewirth.

I. Precaution and Ostensible Agents

Given that the sceptic cannot coherently deny that he, she, or it (it)⁶ is an agent, there are a number of ways of responding to the sceptic who wishes to deny that the Principle of Generic Consistency has any categorically binding application.

First, this position is virtually impossible to sustain in practice. To sustain it, the sceptic must refrain from prescribing anything to any other being. It cannot impose duties on others, or think that there are any beings against whom it can claim the rights that it must, in the

⁶ We use “it” to avoid implying that all agents are human, or are necessarily gendered.

abstract, claim for itself. Indeed, it cannot engage in any discourse of reasons with any being other than itself.

Second, while it might be coherent to consider that there are no other agents, it would certainly be regarded as irrational to do so on the criteria that govern everyday life. To attempt to eschew the practical force of the supreme principle of morality by recourse to solipsistic assertions is still a very high price to pay.

Third, the sceptic's objection does not place the Principle of Generic Consistency at any disadvantage compared with any other practical principle or moral theory, simply because the denial that there are other agents will affect any scheme of practical prescriptions equally.

However, it is possible to do much better than any of this! Everything that our sceptic wishes to assert may be conceded to the point of agreeing (*even where* X, on the basis of its characteristics and behavior, appears to be an agent) that the propositions "X is an agent" and "X is not an agent" are on a par with respect to an ability to demonstrate *the truth* of either. However, it needs to be appreciated that these propositions are not on a par *morally*. If I (any agent) mistakenly presume X to be an agent, then, although this will lead me (mistakenly) to have to restrict my exercise of my rights to some extent, I do not deny my (or any other agent's) status as a rights-holder. But, if I mistakenly presume X not to be an agent, then I deny that X (an agent) is a rights-holder.

Thus, to presume that X is an agent runs no risk of violating the primary injunction of the Principle of Generic Consistency, whereas to presume that X is not an agent, runs this risk. But, given that the Principle of Generic Consistency is categorically binding, there can be no justification under any circumstances whatsoever for violating it. Thus, to risk the possibility of violating the Principle of Generic Consistency, *when this can be avoided*, is itself to violate the Principle. Therefore, it is itself categorically necessary to do whatever one can to avoid this consequence (provided, of course, that the actions taken do not conflict with more important requirements to be derived from the Principle of Generic Consistency).

Where X displays the characteristics and behavior expected of an agent, we might say that X is "ostensibly an agent" or an "ostensible agent." When X is an ostensible agent, by the very nature of the case, it will be possible to treat X as an agent. In this case at least, it is possible to avoid the risk *altogether* of mistakenly denying that X is an agent, by presuming X to be an agent and acting accordingly.

Hence, it follows that agents are categorically required to accept, Where X is an ostensible agent, the metaphysical possibility that X might not be an agent, is to be wholly discounted, and X's ostensible agency is to be taken as sufficient evidence that X has the capacities needed to be an agent.

Implicit in the reasoning to this conclusion, which constitutes a moral argument for the recognition of other minds,⁷ is the following Precautionary Principle.

If there is no way of knowing whether or not X has property P, then, insofar as it is possible to do so, X must be assumed *to have* property P if the consequences (as measured by the Principle of Generic Consistency) of erring in presuming that X *does not have* P are worse than those of erring in presuming that X *has* P (and X must be

⁷ This argument, of course, is a version of Pascal's Wager operating under the constraints of a categorical moral principle.

assumed *to not have* P if the consequences of erring in presuming that X *has* P are worse than those of assuming that X *does not have* P).⁸

II. Proportional Duties to Apparent Partial Agents under Precautionary Reasoning

It has been shown that where X exhibits the characteristics and behavior of an ostensible agent, I (any agent) am categorically required to treat that being as an agent. Suppose, however, that X exhibits (and, as far, as I am able to ascertain, only exhibits) capacities of agency to a degree *less than* an ostensible agent. In other words, suppose the evidence is sufficient to infer only that X is a *partial agent*—a being that has some of the characteristics needed to be an agent to at least some degree, without having sufficient of these to the degree needed to be an agent. In such a case, although X is apparently only a partial agent, *precisely because the proposition that an other is an agent is a metaphysical one and human reason is limited in such matters*, I cannot infer that X *is not* an agent. Just as I cannot *know with certainty* that an other being *is* an agent when that being is an ostensible agent, so I cannot *know with certainty* that X *is not* an agent when X is apparently only a partial agent.

So, even where an other being is apparently only a partial agent there remains a risk that—if I suppose that it is not an agent, and act accordingly—it is an agent, and I will have deprived it of the protection of the Principle of Generic Consistency to which it is entitled. Thus, it remains categorically required, all things being equal, to do whatever one can do to avoid this consequence—provided, as always, that my doing so does not violate more important provisions of the Principle of Generic Consistency.

However, where X is apparently only a partial agent, it is not possible to avoid this consequence *altogether*. I can, indeed, refrain from harming (and can assist) X in ways that would safeguard the benefits that it would receive *if* X had rights and chose to exercise them. I can, indeed, recognise duties not to harm (and to assist) X in various ways. However, it must not be forgotten [p44] that if X is, in fact, an agent, then the Principle of Generic Consistency requires X (thereby) to be accorded will claim-rights,⁹ the benefits of which it may waive. But, by not displaying ostensible agency, X fails to demonstrate (even under precautionary reasoning) that it has the capacities by virtue of which X is able to waive the benefits of what it is entitled to. Thus, the “duties of protection” that I must recognise that I have towards X, where X is apparently only a partial agent, are unavoidably paternalistic, which is at odds with what X is strictly entitled to *qua* agent (should X, in fact, be an agent).

Given that I am categorically required (under precautionary reasoning) to recognise duties of protection to X and Z (who are both apparently only partial agents), what am I required to do if these duties come into conflict?

⁸ Because of its link to the Principle of Generic Consistency, this principle is categorically binding. The reasoning behind *dicta* such as “Innocent unless proven guilty!” or “Give the benefit of the doubt” can be subsumed under this principle. Precautionary reasoning, as such, need not take the Principle of Generic Consistency as the yardstick by which to evaluate the consequences of error.

⁹ Claim-rights are justified claims imposing correlative duties on others. There are two principal theories of claim-rights: the benefit (or interest) theory, and the will (or choice) theory. The difference between the benefit and will theory is that the latter requires the right-holder to have the capacity to waive the benefit of the right (i.e., be an agent).

All other things being equal, such conflicts are to be handled by a criterion of avoidance of more probable harm, according to which,

If my doing y to Z is more likely to cause harm h to Z than my doing y to X (and I cannot avoid doing y to one of Z or X) then I ought to do y to X rather than to Z .

Where y = failing to observe a particular duty of protection, and h = mistakenly denying a being the status of an agent, we can infer by this criterion that,

If my failing to observe a particular duty of protection to Z is more likely to mistakenly deny Z the status of an agent than is my failing to observe this duty of protection to X (and I cannot avoid failing to observe this duty to one of Z or X) then I ought to fail to observe my duty to X rather than to Z .

Since I am more likely to mistakenly deny that a being is an agent the more probable it is that the being is an agent, it follows that my duties of protection to those who are more probably agents take precedence over my duties of protection to those who are less probably agents.

The moral status of a being may be measured by the weight to be given to the duties of protection owed to it by an agent. In such terms, it follows that the moral status of beings who are more probably agents is greater than that of beings who are less probably agents. In other words, the moral status of beings is *proportional* to the probability that they are agents.

Given that X 's display of the capacities of agency must (under precautionary reasoning guided by the Principle of Generic Consistency) be viewed as sufficient evidence that X is an agent, it follows that if X displays characteristics and behavior to a degree less than that of an ostensible agent then this must be viewed as less than sufficient evidence (but evidence nonetheless) that X is an agent. In other words, where X is an ostensible agent, the probability that X is an agent must be taken to be 1, and where X is apparently only a partial agent, the probability that X is an agent must be taken to be >0 but <1 in proportion to the capacities of agency that X displays.

Thus, we establish that apparent partial agents are owed duties of protection by agents in proportion to the degree to which they approach being ostensible agents—not *qua* their being partial agents—but *qua* their possibly being agents.¹⁰

III. Gewirth's Use of the Principle of Proportionality to Derive Generic Rights for Marginal Groups

Gewirth also maintains the Principle of Generic Consistency grants proportional protection to various marginal groups, such as young children, the mentally deficient, fetuses, and non-human animals (see Gewirth, 1978, 121-124; 140-145). However, Gewirth's reasoning for this conclusion differs significantly from our own. Instead of deriving such protection from the epistemic limitations of the Principle of Generic Consistency's empirical application, Gewirth maintains that the protection granted by the Principle of Generic Consistency's ontology is not confined to agents. Gewirth claims that the "Principle of Proportionality"

¹⁰ We do not mean to suggest that the Principle of Generic Consistency requires agents to do everything they possibly can to cater for the possibility that apparently only a partial agent is an agent, as *all things are often not equal*. Analysis of the relative weight of costs derivable from the Principle of Generic Consistency must be left for consideration in future works. For a brief exploration of some of the complexities involved, see Beyleveld 1999b.

operates to extend the population to which the Principle of Generic Consistency applies in the abstract.

Gewirth states the Principle of Proportionality as follows.

“When some quality Q justifies having certain rights R, and the possession of Q varies in degree in the respect that is relevant to Q’s justifying the having of R, the degree to which R is had is proportional to or varies with the degree to which Q is had. Thus, if x units of Q justify that one have x units of R, then y units of Q justify that one have y units of R.” (Gewirth 1978, 121)

At an intermediate step in his argument for the Principle of Generic Consistency, Gewirth shows that agents must (on pain of denying that they are agents) consider their being agents as the sufficient condition for their possession of all of the generic rights (see Gewirth 1978, 10). Consequently, agents deny that they are agents if they do not grant the generic rights equally to all other agents. Thus, the claim that the Principle of Generic Consistency requires agents to grant the generic rights in part to partial agents, is to be validated by substituting “being an agent” for Q and “the generic rights” for R in the Principle of Proportionality. In other words, Gewirth wishes to use the Principle of Proportionality in combination with the Principle of Generic Consistency to infer that as one approaches agency, one is accorded proportionally greater generic rights.

According to James F. Hill (1984, 182),

“The agent will hold the Principle of Proportionality presumably on the grounds that it is rational to do so and, in addition, because of the central role it has played in the traditional doctrines of distributive justice.”

However, such grounds are too weak if the Principle of Proportionality is to be used to extend the subjects of protection of a categorically binding principle. Gewirth himself (1978, 121) claims, not merely that the Principle of Proportionality “is a pervasive feature of traditional doctrines of distributive justice,” but that it is true and, since Gewirth claims that agents are categorically required to grant the generic rights in part to partial agents, he must be claiming that it is necessarily true.

However, while it is necessarily true that, when having Q justifies having R, and the possession of Q varies in degree in the respect that is relevant to having Q’s justifying the having of R, the degree to which R is had is a *function* of the degree to which Q is had, it cannot be inferred (without further conditions being imposed) that having R is *such* a function of having Q that, if having x units of Q justify that one have x units of R, then having y units of Q justify that one have y units of R for *all* values of x and y.

It is also preferable to make explicit the conditions that must be satisfied for possession of Q to vary in degree in the respect that is relevant to having Q justify having R. Thus, with it being understood that R can be any property at all, the Principle of Proportionality should be stated as,

When having some quality Q justifies having some property R, and the extent of having Q sufficient to justify having R in full is not necessary to justify having R to any extent at all, the degree to which R is had is a function of the degree to which Q is had.

As we stated above, in the process of arguing for the Principle of Generic Consistency Gewirth shows that being an agent (defined as having purposes that it acts¹¹ for) is necessary and sufficient for having the generic rights in full (see Gewirth 1978, 10). While having purposes that one acts for is an *invariant* relational property, to have this relational property it is necessary to have particular capacities and properties.¹² While agents have these capacities to the degree needed to have this relational property, partial agents (by definition) have the capacities required to be an agent to a lesser extent. Gewirth claims that the Principle of Proportionality shows that the degree to which partial agents have the generic rights depends upon the degree to which they have the capacities required to be an agent.

This cannot be true, because having the capacities required to be an agent to the degree needed to be an agent is not only necessary (and sufficient) to have the generic rights in full (so that agents with these capacities to degrees greater than that needed to be an agent cannot, thereby, acquire the generic rights to a greater extent), *it is necessary to have any generic rights at all*. This is because, as derived, the generic rights are will claim-rights; i.e., those who have them can always, by their free choice, waive the benefits that exercise of the generic rights entitles them to—provided only that they do not, thereby, neglect or violate their duties to other agents. This is not a function of an arbitrary espousal of the will theory of rights. It derives from the fact that, in the argument to the Principle of Generic Consistency, agents are required to claim the generic rights for themselves, not because they are required to value the generic features of agency for their own sakes, but as instrumental to their pursuit or achievement of their purposes whatever these might be. But, in order to be able to freely waive the benefits of a right, one must have *all* the capacities needed to be an agent. Thus, partial agents cannot have any generic rights.

This objection cannot be evaded by acknowledging that partial agents cannot have any generic rights strictly speaking, and claiming, instead, that the Principle of Proportionality nonetheless shows that partial agents have “quasi-generic rights” (unwaivable protections correlative to duties of agents not to harm partial agents, or to assist them in need) in proportion to their approach to being agents. The Principle of Proportionality can only license inferences about the quantity of predication of a quality, it cannot (by itself) license inferences that alter the quality of what is predicated. To have a quasi-generic right is not to have a generic right to some extent. It is to have a different quality of protection from that granted by a generic right.

IV. Applying Precautionary Reasoning to the Human Fetus¹³

In *Reason and Morality* Gewirth seeks to apply his Principle of Proportionality (together with the Principle of Generic Consistency) to the human fetus (see Gewirth 1978, especially 142-143). Gewirth claims that together these principles establish,

¹¹ See footnote 3.

¹² Gewirth, himself, refers to the capacities and properties required to be an agent (to have this relational property) as the “practical abilities of the generic features of action” (Gewirth 1978, 122).

¹³ For a broader picture of the moral status of the human embryo and fetus incorporating the arguments of this paper, see Beyleveld 1999b. For an earlier analysis, see Beyleveld 1998.

- (a) The fetus has generic rights, which do not include a generic right to freedom,¹⁴ but are restricted to rights to the conditions (“well-being”) necessary to fulfil its potential to develop into an agent (the chief of which conditions is its life).
- (b) The fetus’ generic rights
 - (i) are overridden in case of conflict with the generic rights of its mother;
 - (ii) are not merely of lesser weight than those of its mother, but minimal in comparison—because the fetus has the capacities required to be an agent in “remotely potential form” only and lacks purposivity altogether;¹⁵ and
 - (iii) increase in weight with the length of gestation, because the greater the length of gestation the closer the fetus approaches having the degree of the capacities required to be an agent that an agent has.¹⁶

Applying the Principle of Proportionality under precautionary reasoning requires agents to accept duties of protection towards the fetus insofar as, and to the degree that, the fetus approaches being an ostensible agent (on the grounds that the closer the fetus approaches to being an ostensible agent the more likely it is to be an agent). Assuming that the fetus’ mother is an ostensible agent, she must be taken to be an agent.¹⁷ On the evidence that precautionary reasoning requires us to accept, it is (very much) less likely that the fetus (at any stage of its development) is an agent than that its mother is. Hence, greater moral status must be granted to the mother than to the fetus: duties to the mother (which must be taken to be correlative to her rights) will outweigh any duties in relation to the fetus in case of conflict. Apart from the fact that we cannot agree with Gewirth’s claim that the duties of protection towards the fetus derive from the fetus’ generic rights, we can agree with (b)(ii).

With this caveat, using the Principle of Proportionality under precautionary reasoning, requires us to agree with (b)(iii) as well. In principle, the longer the gestation of the fetus, the more the agency-related characteristics and behavior it will display (by virtue of which it will get closer to being an ostensible agent), and this means that we must progressively take seriously the possibility that it might be an agent after all, in consequence of which we must treat it with greater precaution (and, hence, greater respect).

Gewirth appears to say that the Principle of Proportionality and the Principle of Generic Consistency justify that the fetus has a right to realise its potential to develop into an agent—

¹⁴ Presumably because, not being an agent, the fetus lacks freedom (the capacity to make choices) altogether, and “ ‘may act’ implies ‘can act.’ ”

¹⁵ Evelyn Pluhar maintains that Gewirth’s claim that fetuses do not have primitive purposes or memories has “been called into question quite successfully by neurophysiologists and cognitive psychologists” (1995, 252). She cites empirical research that has been interpreted to show that “neural pathways sufficient for pain perception are present well before birth” and asks rhetorically,

Does Gewirth suppose that aversion to pain or unpleasant sensations also springs ex nihilo upon the point of birth? (ibid.)

However, while Gewirth’s description of the capacities of the fetus may well be inaccurate, this has no bearing on the *principles* of application involved in Gewirth’s analysis.

¹⁶ Gewirth often writes as though “approaching having the capacities required to be an agent” and “having the capacities required to be an agent in part are interchangeable.” They are if “approaching having the capacities required to be an agent” is always read as “approaching having the capacities required to be an agent in full.”

¹⁷ And even if she does not display this degree of agency-related characteristics and behavior, she is bound to display more of these than the fetus—at any stage of its development.

from which it may be inferred that the fetus has a right to life and the other conditions necessary to realise its potential to develop into an agent.

If so, then we need an explanation of how the Principle of Proportionality can effect the inference from

(A) “X is an agent with the generic rights”

to

(B) “Y (a partial agent with the potential to develop into an agent) has a right to develop into an agent.”

We do not know what Gewirth has in mind. However, agents must be granted additive rights—rights to development of their potential (capacities) for action (understood as rights to increase their competence as agents). Since increasing an agent’s competence as an agent involves increasing the degree of capacities it has beyond the degree required to be an agent, agents’ additive rights are essentially rights to increase the degree of the capacities they have. Perhaps, Gewirth reasons that fetuses (as partial agents) must, by the Principle of Proportionality, be granted these same rights to development of the degree of the capacities they possess in proportion to the degree of these capacities they already have. Since the fetus (as a partial agent) cannot yet act, development of its capacity to act can only mean its development into an agent; and, thus, its right to develop its capacity to act will be a right to develop into an agent.

Implicit in the claim that the fetus has a right to develop into an agent is the claim that a partial agent with the potential to be an agent has a right to develop into an agent. So, if the reasoning we have suggested for Gewirth is valid, then an important conclusion follows: viz., A partial agent that is a potential agent has a right to life (and other conditions of its being able to develop into an agent) in proportion to the degree to which its potential is realised (i.e., to the degree to which it approaches being an agent).

However, if this is Gewirth’s reasoning, then it is unsound. The fetus (as a potential agent) is still no more than a partial agent, and cannot have any generic rights. So the Principle of Proportionality cannot show that it has the generic rights to develop its potential to act in proportion to the degree of the capacities required to be an agent that it has. Development of this capacity for action up to the level needed to be able to exercise rights is not commensurable with development of this capacity beyond this level.

What if we look at the matter under precautionary reasoning? Under such reasoning, the fetus is to be viewed as a possible agent that does not exhibit the capacities required to be an agent to the degree that requires us to accept that it is an agent. So viewed, if the fetus is an agent, then its failure to display the characteristics and behavior of an ostensible agent is not because it is not an agent; it is because something is preventing it from displaying the [p50] qualifying characteristics and behavior (or from displaying it in ways that we can interpret properly).¹⁸

So, if the fetus is, despite apparently being only a partial agent, an agent, then the proper story to tell is not that, as it approaches being an ostensible agent, its potential to be an agent

¹⁸ Thus, one way of explaining why we are required to take more seriously the possibility that a fetus is an agent the closer it approaches to being an ostensible agent, is that the more the agency-related characteristics and behavior it displays the less elaborate and fanciful are the metaphysical stories we have to tell to explain why, despite being an agent, it is unable to display the expected characteristics and behavior.

is being realised, but that as it approaches being an ostensible agent, its potential to express itself as an agent is being realised. Suppose, then, that the fetus is an agent. From this it follows that the fetus does have the generic rights.

Of course, because the fetus is apparently only a partial agent, we cannot treat it as having such rights. But we can protect it as an agent, by accepting the duty to allow the fetus' potential to display the capacities required to be an agent to develop (and to assist this development, when necessary). Furthermore, this duty will be subject to proportionality reasoning, because the more the fetus displays as these sort of characteristics and behavior develop (to the point of being an ostensible agent) the more seriously we must take the possibility that it is an agent.

However, we cannot conclude from this that we have a duty to protect the life of a potential agent as such (and other conditions of its being able to develop into an agent) in proportion to the degree to which it approaches being an agent; for, the potential that is the basis of our duty to protect the fetus' development of the capacities (required to be an agent) is not the potential of the fetus to be an agent, but the potential of a possible agent unable to display these capacities to develop the ability to do so.

We have already argued that, under precautionary reasoning, agents have a duty to allow the fetus' potential to display the capacities needed to be an agent to develop (and to assist this development, when necessary), and that this duty is subject to proportionality reasoning. However, because evidence that a fetus or embryo (X) is a potential ostensible agent is evidence relevant to the probability that X is an agent, precautionary reasoning also supports the following claims.

- (1) Evidence that X is a potential ostensible agent, by itself, requires agents to grant X moral status (in proportion to the strength of the evidence); and
- (2) Evidence that X is a potential ostensible agent adds to the moral status secured for X by the degree to which X exhibits the characteristics and behavior associated with possession of the capacities required to be an agent. Thus, if Y is apparently only a partial agent with y moral status (by virtue of Y's degree of the [p51] generic capacity for action) but not apparently a potential ostensible agent, and X is apparently a partial agent with y moral status and also apparently a potential ostensible agent, then agents must take more seriously the possibility that X is an agent than that Y is an agent, by virtue of which their duties of protection to X are greater than their similar duties to Y. (And, of course, the degree to which evidence of potential to become an agent adds to X's moral status will be proportional to the strength of this evidence.)

The weakest evidence that one can have that X is a potential ostensible agent is that X is a member of a species S (some of) whose members are known to develop into ostensible agents under specified conditions.¹⁹ To this can be added knowledge of specific characteristics that X has and of correlations between possession of these and development into ostensible agents by members of S. All factors of this kind being equal, the further X develops in the direction of becoming an ostensible agent, the more confident one can be that X will develop the whole way. Thus, considerations of evidence for potential and

¹⁹ Complications, which we will not address here, are created by the fact that these conditions can be specified differently. Thus, the concept of potentiality, like that of a cause (vs. background conditions), is to a degree normative in being dependent on what is taken to be "normal."

considerations of evidence of degree of approach to being an agent will not be wholly independent. The precise interactions, however, cannot be stated without a detailed analysis, which must be left for another occasion.

Concluding Remarks

In the final analysis, despite the fact that he couches this in terms of the having of generic rights, the thesis that Gewirth wants to defend is that various categories of creature that do not display all the necessary characteristics of agents, are necessarily accorded moral status by the Principle of Generic Consistency in proportion to the degree to which they approach being ostensible agents. We have argued that this thesis is true.

However, Gewirth's attempt to demonstrate this thesis takes the form of claiming that the Principle of Proportionality grants the generic rights in part to partial agents, in proportion to the degree to which they approach being agents. In so doing, Gewirth is modifying what the Principle of Generic Consistency says. If he is right, then this principle itself should state not just that agents must grant the generic rights equally to all agents, but that agents must grant the generic rights to all beings in proportion to their approach to being agents. This claim affects the ontology of Gewirth's moral theory; the population of the principle's beneficiaries in the abstract terms in which the categorically binding argument is couched. Gewirth's application of the Principle of Proportionality to the Principle of Generic Consistency is part of his argument to the principle itself, rather than an application of the principle to objects in the empirical world.

We have argued that this attempt must fail. Gewirth cannot be right about this without implying propositions that contradict the possible validity of his argument for the Principle of Generic Consistency.

Our own argument does not attempt to extend the principle's ontology, which remains restricted to the population of agents. It is not presented as part of the derivation of the principle at all. It is grounded in an argument about the process that must be gone through to apply the Principle of Generic Consistency to objects in the empirical world. It takes as its basis the fact that application of the Principle of Generic Consistency requires judgments concerning which objects in the world are agents. The key to this argument is the claim that considerations of precaution render agents categorically bound to accept that beings displaying the characteristics and behavior expected of an agent are to be taken to be agents even though it cannot be proven that this is so. The same considerations of precaution, however, render it illegitimate to entirely discount the possibility that a being displaying any of the necessary characteristics of an agent might be an agent. How seriously this possibility must be taken is, however, proportional to how much evidence we have that the being is an agent (which will depend on how much of the behavior sufficient—under precautionary reasoning—to render it necessary to judge that a being is an agent the being displays).

Thus, under precautionary reasoning, proportionality reasoning requires that beings that are apparently only partial agents be granted moral status in proportion to how closely they approach being ostensible agents. Consequently, although our analysis and Gewirth's own are very different theoretically, the practical implications of these analyses (accurately performed) should not be very different.

Thus, in practice, we can say that we have shown that agents owe duties of protection to partial agents in proportion to their approach to being agents. If we do this, however, it

must not be forgotten that this is only a shorthand, and that the duties are actually owed to beings that are apparently only partial agents on the basis of their possible status as agents, by virtue of which they are owed not in proportion to the degree of approach to being an agent but in proportion to the degree to which what is apparently only a partial agent approaches being an ostensible agent.²⁰

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²⁰ This may seem to be an over subtle point. However, it is arguable (see Copleston 1965, Vol. 7, Part I, 22) that the German Idealists inflated the Kantian theory of knowledge into a metaphysics of reality, by regarding the categories, not as conceptual moulds of human understanding but as categories of existence, and that this was facilitated by Kant's use of ontological locutions such as phenomena and noumena to express theses about the role of the categories in empirical knowledge. In our view, this is not trivial, but responsible for systematically obscuring the major insights of Kant's transcendental philosophy for over two centuries. (See Beyleveld 1980.)